

Personal Paper
11/5/01

AN ORDINANCE BY *Lee Morris & Able Mable Thomas*

AN ORDINANCE TO DELETE THE CURRENT SECTION 2-806, OF THE CODE OF ORDINANCES, ENTITLED "BOARD OF ETHICS", IN ITS ENTIRETY AND REPLACE IT WITH A NEW SECTION 2-806, ENTITLED "BOARD OF ETHICS", IN ORDER TO GRANT SUBPOENA POWERS TO THE BOARD OF ETHICS; AND FOR OTHER PURPOSES.

WHEREAS, the Board of Ethics is charged with the responsibility of investigating and rendering unbiased opinions on ethical issues that face officers and employees of the City of Atlanta; and

WHEREAS, the Board of Ethics must hold evidentiary hearings in order to render its opinions; and

WHEREAS, the Board of Ethics currently must subpoena witnesses by requesting the Committee on Council to exercise its subpoena power on behalf of the Board of Ethics.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA ORDAINS as follows:

Section 1: That the current Section 2-806 be deleted in its entirety and be replaced with the following:

Sec. 2-806. Board of Ethics.

(a) There is hereby continued in existence a board of ethics to consist of five members, all of whom shall be known for their personal integrity and all of whom shall be residents of and domiciled in the city. The members shall be nominated and confirmed as follows:

(1) One member shall be nominated by the president of the Atlanta Bar Association, chosen from the attorney members of the association, and confirmed by the council.

- (2) One member shall be nominated by the president of the Gate City Bar Association, chosen from the attorney members of the association, and confirmed by the council.
- (3) One member shall be nominated by the president of the council and confirmed by the council.
- (4) Two members shall be nominated by the mayor and confirmed by the council.
- (5) Nominees shall be identified and their names submitted to council for confirmation within 30 days of the date on which a vacancy in a board position occurs. A nominee shall be deemed confirmed by the council if the council fails to act on such nomination within 30 days of submission of the name of the nominee to the council.
- (b) The members shall each serve for only one term of five years and shall serve without compensation. The members shall elect a chair and effect their own organization internally. The terms of the members shall be five years; provided, however, that the initial term of the first Gate City Bar Association nominee shall be three years, the initial term of the first Atlanta Bar Association nominee shall be two years, and the initial term of the first mayoral nominee shall be one year.
- (c) Members shall be prohibited from engaging in municipal election political activities and from making campaign contributions to candidates in municipal elections. Violations of this subsection may be punished by removal from board membership by a majority vote of the members.
- (d) All members presently sitting on the board may complete their current terms.
- (e) The position of a member of the board shall be deemed vacated:
 - (1) Upon the death of a member or the disability or incapacity of a member for more than 90 days;
 - (2) Upon the written resignation of the member, when accepted by the nominating party. A resignation tendered for more than 30 days shall be deemed accepted;
 - (3) By the member ceasing to be a resident of the city;
 - (4) By the member ceasing to be a member of the bar association or by losing the license to practice law; or
 - (5) Upon removal of the member for cause by a two-thirds vote of the full council. The council may remove a member for cause if the member commits or pleads nolo contendere to a felony, a misdemeanor involving moral turpitude or if the member takes any action in violation of this division. A member of the board who is indicted for commission of a misdemeanor involving moral turpitude or a felony shall be suspended from the board pending final disposition of the charge.
- (f) The board of ethics shall select a secretary to provide clerical assistance to the board and shall designate a place for meetings of the board. The board of ethics shall elect a chair by majority vote of the serving members. Each chair will serve a one-year term and shall be eligible to serve as chair in successive years, but the chair shall not serve more than three successive years. The board of ethics shall also elect a vice-chair to preside in the absence of the chair. The vice-chair will serve a one-year term and shall be eligible to serve as vice-chair in successive years, but the chair shall not serve more than three successive years. The board shall hold open meetings at such times as it may desire,

and a majority of the members of the board shall constitute a quorum for the transaction of the business of the board. A majority opinion of the members sitting at any hearing shall govern as to decisions of the board. The board, in its judgment, shall be free to contract for the services of a competent court reporter to take down statements, testimony and discussions at its meeting or to use in lieu thereof a competent person adept at shorthand reporting and/or mechanical transcribing devices, whichever method is from time to time desired by the board, such services to be paid for by the city. Except as provided in subsection (k)(2) of this section, all permanent records of the board shall be confidential and shall be kept under lock in the office of the chief operating officer. The city shall pay all administrative costs, including those specifically stipulated in this section, pertaining to the operation of the board of ethics.

(g) The board shall have the authority to prescribe rules and regulations pursuant to this division to administer the financial disclosure process and to issue opinions under this division.

(h) The board shall render an opinion based upon a real or hypothetical set of circumstances, when requested in writing by anyone who is an official or employee of the city or who is personally and directly involved in a matter requiring interpretation of this division. A person having knowledge of wrongdoing may forward such information to the city attorney's office, which may forward it to the board of ethics for investigation. Such opinion shall be rendered pursuant only to a written request, fully setting forth the matter to be reviewed by the board. The proceedings of the board pursuant to this subsection shall be open, unless otherwise provided by state law. The opinions of the board shall be made available to the public to examine and for the press to publish without substantive deletions therefrom. Upon request of the board of ethics, the city attorney or any attorney representing the city attorney's office shall meet with and advise the board of ethics.

(i) The board of ethics shall have the authority to investigate any alleged violation of this division as follows:

(1) Upon a written sworn complaint by any person in a form prescribed by the board and signed under penalty of perjury, the board shall commence an investigation of any matter it may determine to be within its purview. Within five days of the commencement of an investigation, the board shall notify any person under investigation of the existence of the investigation and the nature of the alleged violation. Within 30 days of the initial notification and every 30 days thereafter until the matter is terminated, the board shall notify the complainant of the action taken to date by the board, together with the reason for such action or nonaction.

(2) The board of ethics shall have authority to gather additional information if it finds that the information available is inadequate to make an informed determination, including but not limited to the use of subpoena powers designated in Section (k) (1) of this division.

(3) If the board determines after a preliminary investigation of the complaint that there does not exist probable cause for belief that this division has been violated, the board shall so notify the complainant and the subject of the investigation. If the board

determines after a preliminary investigation of the complaint that there does exist probable cause for belief that this division has been violated, the board shall give notice to the person involved to attend a hearing to determine whether there has been a violation of this division.

(j) No official or employee shall use or threaten to use any official authority or influence to discourage, restrain or interfere with any other person for the purpose of preventing such person from acting in good faith to report or otherwise bring to the attention of the board of ethics information relating to an ethics violation or investigation. No official or employee shall use or threaten to use any official authority or influence to effect any action as a reprisal against an official or employee who reports, initiates a sworn complaint or otherwise brings to the attention of the board of ethics information relating to a board investigation or an ethics violation.

(k) All proceedings of the board, pursuant to this section, shall be as follows:

(1) Hearings shall be open, unless otherwise provided by state law, and attended by those persons and for such duration as is determined by the board to be necessary to its investigation of the alleged violation. For use in proceedings under this division, the board shall have the power to issue subpoenas to compel any person to appear, give sworn testimony, or produce documentary or other evidence. ~~may request the committee on the council to exercise the subpoena power specifically granted such committee for use in proceedings under this division, in keeping with section 2-406 of the Charter.~~ All testimony shall be under oath, which shall be administered by a member of the board. Any person who appears before the board shall have all of the due process rights, privileges and responsibilities of a witness appearing before the courts of this state. All witnesses summoned before the board shall receive witness fees as paid in like circumstances in the courts of this state. Any person whose name is mentioned during a proceeding of the board and who may be adversely affected thereby may appear personally before the board on such person's own behalf or may file a written sworn or unsworn statement for incorporation into the record to be made part of all proceedings pursuant to this subsection.

(a) The failure to obey the lawful command of a subpoena issued under this section shall be punished as provided in Section 1-8.

(2) At the conclusion of proceedings concerning an alleged violation, the board shall immediately begin deliberations on the evidence and proceed to determine by a majority vote of members present whether there has been a violation of this division. The findings of the board concerning a violation and the record of the proceedings shall be made public by the board as soon as practicable after the determination has been made.

(l) Any person requesting an opinion in accordance with subsection (h) of this section who has made a full and complete disclosure of all relevant facts, any person under investigation who is in good faith and has not withheld relevant and material information from the board of ethics and any other person shall be entitled to rely on the opinion or finding of the board of ethics as a guide to the conduct of such person in the person's relations to and with the city. Compliance with the opinion or finding of the

board of ethics shall serve in mitigation in any proceedings against such person for violation of this division.

(Code 1977, § 18-2019)

Cross reference(s)--Boards, councils, commissions and authorities, § 2-1851 et seq.
Sec. 2-807. Hearings by board; appeals.

Any intentional violation of this division or the furnishing of false or misleading information to the board of ethics or the municipal clerk with the intent to mislead or the failure to follow an opinion rendered by the board shall subject the violator to prosecution by the city solicitor in municipal court and, upon conviction, to a fine of up to \$1,000.00 per violation and up to six months imprisonment, whether the official or employee is elected or appointed, paid or unpaid. Nothing in this section shall be interpreted to conflict with O.C.G.A. §§ 45-5-6, 16-10-8 and 16-10-20. An action for violation of this division or the furnishing of false or misleading information must be brought within one year after the violation is discovered or, with respect to furnishing of false misleading information, within one year after the filing of such information, provided that the period of limitation for filing false or misleading information shall not begin to run until actual filing of information required to be disclosed under this division. The decision of the board after a hearing shall be final; provided, however, that such proceeding shall be subject to review by writ of certiorari to the superior court of the county. The board's designee shall be authorized to acknowledge service of any such writ and shall, within the time provided by law, certify and cause to be filed with the clerk of the superior court a record of the proceedings before the board, the decision of the board and the notice of the board's final actions.

(Code 1977, § 18-2021)

SECTION 1. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

01-0-1892

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"Alice" MaMa MaMa*

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- ☐ CONSENT REFER
- ☐ REGULAR REPORT REFER
- ☐ ADVERTISE & REFER
- ☐ 1st ADOPT 2nd READ & REFER
- ☒ PERSONAL PAPER REFER

Date Referred

11/5/01

Referred To:

Council on Council

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee

Date

Chair

Referred to

Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

Refer To

Committee

Date

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Committee

Date

Chair

Action:

Fav, Adv, Hold (see rev. side)

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Members

Committee

Date

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Action:

Fav, Adv, Hold (see rev. side)

Other:

Members

CERTIFIED

FINAL COUNCIL ACTION

☐ 2nd

☐ 1st & 2nd

☐ 3rd

Readings

☐ Consent

☐ V Vote

☐ CRC Vote

MAYOR'S ACTION